

TRINA A. HIGGINS, United States Attorney (#7349)  
JAMIE Z. THOMAS, Assistant United States Attorney (#9420)  
Attorneys for the United States of America  
111 South Main Street, Suite 1800  
Salt Lake City, Utah 84111  
Telephone: (801) 524-5682

---

IN THE UNITED STATES DISTRICT COURT  
DISTRICT OF UTAH

---

UNITED STATES OF AMERICA,

Plaintiff,

vs.

VAINIAKU MAGIC NAA,

Defendant.

Case No. 2:22-cr-43 CW

UNITED STATES' SENTENCING  
MEMORANDUM

Judge Clark Waddoups

Sentencing Date: November 8, 2022

---

The United States of America, by and through Assistant United States Attorney Jamie Z. Thomas, hereby files this Sentencing Memorandum in anticipation of sentencing on November 8, 2022.

**I. RELEVANT FACTS**

From approximately March 1, 2020 through approximately January 15, 2022, Defendant straw purchased at least 95 firearms for other individuals. Specifically, on ATF Form 4473, Defendant stated that he was the actual purchaser of the firearms, when in fact he knew he was purchasing the firearms for other individuals. At least 8 of the firearms purchased by Defendant have been recovered in criminal investigations – 7 in California and 1 in Utah.

Defendant was arrested on a Complaint on January 7, 2022 and was released on pretrial conditions on February 3, 2022. The grand jury returned a six-count Indictment on February 9, 2022.

After being indicted, Defendant ultimately pleaded guilty to Counts 1 and 2 of the Indictment and admitted that he was dealing in firearms without a license and that he had made a false statement during the acquisition of a firearm. The parties agreed pursuant to Rule 11(c)(1)(C), that a sentence of 18 months BOP custody was reasonable.

## **II. SENTENCING DISCUSSION**

The PSR correctly calculates the advisory guideline range of 37-46 months. After calculation of the guidelines, the Court generally examines the factors under 18 U.S.C. § 3553(a) to consider a just and fair sentence - a sentence that is sufficient, but not greater than necessary.

### *A. Nature and Circumstances of the Offense*

The nature and circumstances of the offense support the proposed sentence. Defendant was straw purchasing firearms for individuals in California. The individuals in California would text Defendant screenshots of firearms they wanted Defendant to purchase for them. Financial analysis shows that Defendant would receive payment oftentimes through Cashapp and then firearms purchases would occur later that day or the following day. The conduct occurred over a two-year period. According to a cooperating defendant, Defendant received \$100 as compensation for each firearm he purchased. In addition to Defendant's direct contact with individuals in Utah, there was a "middle-man" in Utah who sometimes facilitated the transfer of the firearms from Defendant to the individuals in California. The middle-man Siosifa Lavulavu has pled guilty for his role in the firearms trafficking. Below is an example of their text message exchanges:

September 14, 2021

- i. LAVULAVU: "Wya"
- ii. NAA: "home"
- iii. LAVULAVU: "Come by let's go get couple? FN and cloc"
- iv. NAA: "yup" "On my way"
- v. LAVULAVU: "I'm gonna give you 1800 will that work?"
- vi. LAVULAVU: "Fn and one pistol cloc"
- vii. NAA: "should be"
- viii. LAVULAVU: "I will pay your fees as well"
- ix. LAVULAVU: sent pictures of hundred-dollar bills.
- x. NAA: "got it"
- xi. LAVULAVU: "ok"
- xii. NAA: "43x or 19."
- xiii. LAVULAVU: "?"
- xiv. NAA: "nvm" "I to the 43x instead"
- xv. LAVULAVU: "what 43?"
- xvi. NAA: "it's a small gloc"
- xvii. LAVULAVU: "19 is better"
- xviii. NAA: "u sure.?"
- xix. LAVULAVU: "you right 43"
- xx. NAA: "last time they wanted more 43x cuz its smaller to hide" "hahaha"
- xxi. NAA: Sent a picture of SCHEELS credit card machine for 1- Five-Seven 5.7x28mm \$1,099.99, 1- G43X 9mm FS slide 10rd \$529.99, balance due: \$1,748.15
- xxii. NAA: "lol" "I got one for u" "haha"
- xxiii. LAVULAVU: "I got your cash I'll be home 45 min"

September 15, 2021

- xxiv. NAA: "did u wna try to get some xds?"
- xxv. LAVULAVU: "yes"
- xxvi. NAA: "CAL ranch closes at 9" "if u wna chec it out"
- xxvii. LAVULAVU: "yes" when I leave here I'm gonna hit you up" "on my way! Home"
- xxviii. LAVULAVU: "We still gonna hit cal ranch?"
- xxix. NAA: "meet me there.?" "pullin up to birds"
- xxx. LAVULAVU: "ok" "on my way"
- xxxi. NAA: "me too" "im here"
- xxxii. LAVULAVU: "passing the police station" "Here"
- xxxiii. NAA: "im inside" "in the bac"
- xxxiv. LAVULAVU: "ok"

- xxxv. **NAA:** sent a picture of the credit card machine for a sale of \$1,104.65, tax \$74.67.
- xxxvi. **NAA:** “found another FN.” “lmk”
- xxxvii. **LAVULAVU:** “Let’e get it we getting 4 total today”
- xxxviii. **NAA:** “yupz..”
- xxxix. **NAA:** FN, XD, Gloc..”
  - xl. **LAVULAVU:** “ok”
  - xli. **NAA:** “no 10mm...so I got a gloc 23” “I mean 27”
  - xlii. **LAVULAVU:** “yup”
  - xliii. **NAA:** “good thing we came with extras” “taxes hit”
  - xliv. **LAVULAVU:** “What was the total?”
  - xl. **NAA:** “2305” “hahaha”
  - xlvi. **LAVULAVU:** “I can give you the difference”
- xlvi. **NAA:** “Brand new, in box. \$3600 for the don’t ask don’t tell price. He has these on hand. So which ever 5 you want. May abel to get tomorrow night. Need cash upfront.
  - o 3- 43 (not 43x) 2 mags 6+1 plastic case
  - o 2- 26 Gen 3 2mags 10+1 plastic case
  - o 2- 17 gen 3 2mags 17+1 plastic case
  - o 1- 23 gen5 3 mags 13+1 plastic case (I need to verify if this one new)
  - o 2or3- 19 gen 3 2mags 15+1 plastic case
  - o His partner has the 1- g20
  - o Lmk what u think
- xlvi. **LAVULAVU:** “Call me when you get chance confused on the quantity”
- xlvi. **NAA:** “u get to pic 5 out of this list” “all glocs”
  - 1. **LAVULAVU:** “Total of 11 they have right now? But we can only pick 5”
  - li. **NAA:** “yea..this is for the no papers” “hahaha” “if not we keep doin what we doin”
  - lii. **LAVULAVU:** “6+1 plastic case mean?”
  - liii. **NAA:** “it holds 7 in the clip..plastic case it comes wit a case” “all brand new”
  - liv. **LAVULAVU:** “They only selling 5, but the list shows they have 11 total am I right?”
  - lv. **NAA:** “yea..so u can whichever 5 u want out of the 11”
  - lvi. **LAVULAVU:** “will 11 be cheaper?” “Let me know on 11 what the price gonna be” “Honestly buying them single at the store is cheaper they gotta give us better deal” “We will by 11 every 2weeks if his number is fair”
  - lvii. **NAA:** “lol” “let me chec..”
  - lviii. **LAVULAVU:** “No ghost guns right”

*B. History and Characteristics of the Defendant*

Defendant is a 35-year-old man with no criminal history, which made him an ideal straw purchaser. He has some college education and is gainfully employed. Defendant has done well on pretrial supervision. His personal history and characteristics support a below-guideline sentence of 18 months.

*C. The Sentence Reflects the Seriousness of the Offense*

A sentence of 18 months reflects the seriousness of this offense. Defendant's role in obtaining over 95 firearms for others who could not lawfully purchase firearms is a serious offense, especially given that as of the time of this filing, 8 of the firearms have been recovered in criminal investigations including violent crimes.

*D. The Sentence Promotes Respect for the Law*

Dealing in firearms without a license and making false statements during the acquisition of a firearm are serious offenses. Accordingly, the laws of the United States provide for relevant punishment of such an offense. A serious and substantial sentence for this activity is warranted. A sentence of 18 months would promote respect for the law by Defendant as well as by the community.

*E. The Sentence Provides Just Punishment*

An 18-month sentence would provide just punishment for Defendant's conduct.

*F. The Sentence Affords Adequate Deterrence to Criminal Conduct*

In order to adequately deter Defendant's conduct, as well as the conduct of other persons who anticipate straw purchasing firearms, a sentence of 18 months would reflect the judicial system's intolerance of such activities.

*G. The Sentence Protects the Public from Further Crimes of the Defendant*

The United States hopes that Defendant will not commit further crimes on the public after this experience with the federal justice system. A sentence of 18 months would likely deter Defendant's future conduct.

*H. The Sentence Can Provide Correctional Treatment and Educational Training*

It is anticipated that Defendant will have the opportunity to avail himself to some of the relevant educational/vocational programs while serving his sentence, in custody and while on supervised release.

*I. The Sentence Avoids Unwarranted Sentencing Disparities Among Similarly Situated Defendants*

A sentence of 18 months would not be disparate to sentences imposed on other Defendants with no criminal history who were straw purchasing firearms.

**III. CONCLUSION**

Most of the factors under § 3553(a) support a guidelines sentence, but Defendant's personal history and characteristics support a sentence below the guideline range. Thus, the United States asks the Court to accept the proposed sentence of 18 months BOP custody.

DATED this 24<sup>th</sup> day of October 2022.

JAMIE Z. THOMAS  
United States Attorney

/s/ Jamie Z. Thomas  
JAMIE Z. THOMAS  
Assistant United States Attorney